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America, N.A. (erroneously sued as
“Bank of America Bank, N.A.”) and
Wells Fargo Bank, N.A., as Trustee for
the Banc of America Alternative Loan
Trust 2006-7 (erroneously sued as
“Wells Fargo Bank, N.A.”)

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

MARYANN ROSE BROYLES,
INDIVIDUALLY AND AS CO-
TRUSTEE OF THE MARYANN
ROSE BROYLES REVOCABLE
TRUST,

Plaintiff,

vs.

BANK OF AMERICA BANK, N.A.;
and WELLS FARGO BANK; N.A.,

Defendants.

CIVIL NO. CV 12-00426-LEK-KSC

**ORDER GRANTING
DEFENDANTS’ MOTION FOR
RELIEF FROM THE ENTRY OF
DEFAULT FILED OCTOBER 26,
2012 AND FINDINGS AND
RECOMMENDATION TO DENY
AS MOOT PLAINTIFF’S SECOND
MOTION FOR DEFAULT
JUDGMENT**

**Hearing Date: January 25, 2013
Time: 9:30 a.m.
Judge: Kevin S.C. Chang**

**ORDER GRANTING DEFENDANTS' MOTION FOR RELIEF FROM
THE ENTRY OF DEFAULT FILED OCTOBER 26, 2012 AND FINDINGS
AND RECOMMENDATION TO DENY AS MOOT
PLAINTIFF'S SECOND MOTION FOR DEFAULT JUDGMENT**

Defendants BANK OF AMERICAN, N.A. (erroneously sued as “Bank of America Bank, N.A.”) (“BANA”) and WELLS FARGO BANK, N.A.’S (“Wells Fargo”) Motion to Set Aside Entry of Default Filed October 26, 2012 (“Motion to Set Aside Entry of Default”) and Plaintiff MARYANN ROSE BROYLES, INDIVIDUALLY AND AS CO-TRUSTEE OF THE MARYANN ROSE BROYLES REVOCABLE TRUST’S (“Plaintiff”) Second Motion for Default Judgment (“Motion for Default Judgment”) came on hearing before this Court on January 25, 2013. BANA and Wells Fargo (together, “Defendants”) were represented by Patricia J. McHenry, Esq. Plaintiff was represented by Sandra Lynch, Esq.

I. MOTION TO SET ASIDE ENTRY OF DEFAULT

The Court, having reviewed the written submissions and having considered the arguments of counsel at the hearing on the Motion to Set Aside Entry of Default, grants the Motion to Set Aside Entry of Default. The Court finds that Defendants have demonstrated that good cause exists for setting aside the default. The Court cannot say that the Defendants engaged in culpable conduct which led to the default, or that they willfully, deliberately, or in bad faith failed to answer. The record and file in this case demonstrates that Defendants have alleged

sufficient facts to show that a legitimate defense exists. This Court notes that the Defendants need not prove a meritorious defense at this point. Thus, this Court leaves questions regarding the truth of the factual allegations and the merits for a later stage in this litigation. Finally, the Court finds that the Plaintiff will not suffer prejudice with the default being set aside. She is still able to pursue her claims, and there is no foreclosure action pending against her in state court. Moreover, this case is in its infancy, and the delay in filing of the answer will not affect the case. Plaintiff is not prejudiced simply because she will be compelled to litigate her claims on the merits. Therefore, without reaching the facts or the merits with regard to the defenses that are pled, which will be left to a later stage in this litigation, the Court grants Defendants' Motion to Set Aside Entry of Default. Defendants have until February 8, 2013, to respond to the Complaint.


II. MOTION FOR DEFAULT JUDGMENT

The Court, having reviewed the written submissions and having considered the arguments of counsel at the hearing on Plaintiff's Motion for Default Judgment, the Court finds and recommends that the Motion for Default Judgment be denied. Insofar as the Court has granted Defendants' Motion to Set Aside Entry of Default, the Motion for Default Judgment is moot.

DATED: Honolulu, Hawaii, February 20, 2013.

APPROVED AND SO ORDERED:




Kevin S.C. Chang
United States Magistrate Judge

APPROVED AS TO FORM:

/s/ Sandra Lynch
SANDRA LYNCH

ATTORNEY FOR PLAINTIFF
MARYANN ROSE BROYLES,
INDIVIDUALLY AND AS CO-TRUSTEE
OF THE MARYANN ROSE BROYLES
REVOCABLE TRUST

**ORDER GRANTING DEFENDANTS' MOTION FOR RELIEF FROM THE
ENTRY OF DEFAULT FILED OCTOBER 26, 2012 AND FINDINGS AND
RECOMMENDATION TO DENY AS MOOT PLAINTIFF'S SECOND
MOTION FOR DEFAULT JUDGMENT; Broyles vs. Bank of America Bank,
N.A., et al.; Case No. CV12-00426-LEK-KSC**